

project water may be supplied is designed:

(a) To provide viable farm opportunities on land receiving Reclamation project water.

(b) To distribute widely the benefits from the Reclamation program.

(c) To preclude the accrual of speculative gain in the disposition of excess land.

(d) To require reimbursement to the Federal Government of the full cost of providing irrigation water to landholdings which exceed established limits.

**§ 426.2 Applicability.**

(a) These regulations shall become effective on May 13, 1987. An election by a water district or a landowner or a lessee to come under the discretionary provisions of the Reclamation Reform Act made after April 12, 1987, but on or before the effective date of these final rules shall be considered if it were made on April 12, 1987.

(b) These regulations apply to all irrigation land subject to the acreage limitation and/or full-cost provisions of Reclamation law. (Included are excess lands, whether under recordable contract or not, and nonexcess land.)

(c) Sections 426.5 through 426.12 of these regulations apply variously to all districts subject to the acreage limitation and full-cost provisions of Reclamation law. The way in which they apply depends upon whether the district has (1) a contract which was in force on October 12, 1982, (2) a contract which was amended after October 12, 1982, or (3) a contract which was entered into after October 12, 1982.

Application of these sections will also vary depending upon whether an individual or entity subject to Reclamation law has made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982.

(d) The remainder of these rules, §§ 426.13 through 426.23, may not apply to all districts, but if they do apply, they apply equally.

(e) In many cases, hypothetical examples illustrating the application of a specific rule have been provided. This approach is in direct response to the public's expressed need. The examples

provided should not be construed, however, as being exclusive interpretations of a rule. They are provided only as an interpretative tool.

**§ 426.3 Authority.**

These rules and regulations are written under the authority vested in the Secretary by the Congress in the Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Public Law 97-293, 96 Stat. 1263; and the Reclamation Act of 1902, as amended and supplemented, 32 Stat. 388 (43 U.S.C. 371, *et seq.*).

**§ 426.4 Definitions.**

As used in these rules:

(a) The term *arable land* means land which, when farmed in adequate size units for the prevailing climatic and economic setting and provided with essential on farm improvements, will generate sufficient income under irrigation to pay farm production expenses; provide a return to the farm operation, labor, management, and capital; and at least pay the operation, maintenance, and replacement costs of related project irrigation and drainage facilities.

(b) The term *contract* means any repayment or water service contract between the United States and a district providing for the payment of construction charges to the United States including normal operation, maintenance, and replacement costs pursuant to Federal Reclamation law. All water service and repayment contracts are considered contracts even if the contract does not specifically identify that portion of the payment which is to be attributed to operation and maintenance and that which is to be attributed to construction.

(c) The term *contract rate* means the repayment or water service rate that is set forth in a contract that is to be paid by a district to the United States.

(d) The term *dependent* means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152 as it may from time to time be amended).

(e) The term *discretionary provisions of title II* or *discretionary provisions* refers to sections 203 through 208 of Public Law 97-293.

(f) The term *district* means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water. This definition includes entities which contract for construction or improvement of water storage and/or delivery facilities.

(g) The term *excess land* means irrigable land, other than exempt land, owned by any landowner in excess of the maximum ownership entitlement under the applicable provision of Reclamation law.

(h) The term *exempt land* means irrigation land in a district to which the acreage limitation and pricing provisions of Reclamation law do not apply.

(i) The term *full cost* means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions, with interest on both accruing from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. When used in these regulations, the term "full-cost rate" means the full-cost charge plus actual operation, maintenance, and replacement costs required under Federal Reclamation law.

(j) The term *individual* means any natural person, including his or her spouse, and including other dependents within the meaning of the Internal Revenue Code of 1954 (26 U.S.C. 152,) as it may from time to time be amended; provided that, with respect to the ownership limitations established by prior law, the term individual does not include his or her spouse or dependents.

(k) The term *irrevocable election* means the legal instrument which a landowner or lessee uses to make his or her owned and/or leased irrigation land subject to the discretionary provisions of Title II. The election is binding on the elector and the irrigation land in his or her holding, but will not be binding on a subsequent landholder of that land.

(l) The term *irrigable land* means arable land under a specific project plan for which irrigation water is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided or are planned to be provided. For the purpose of determining the areas to which acreage limitations are applicable, it is that acreage possessing permanent irrigated crop production potential, after excluding areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feedlots, equipment storage yards, permanent roads, permanent ponds, and similar facilities, together with roads open for unrestricted use by the public. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by the landowner, are included in the irrigable acreage.

(m) The term *irrigation land* means all irrigable land receiving irrigation water and other land receiving irrigation water.

(n) The term *irrigation water* means water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary.

(o) The term *landholder* means a qualified or limited recipient or a prior law recipient who owns and/or leases land subject to the acreage limitation and pricing provisions of Federal Reclamation law.

(p) The term *landholding* means total acreage of one or more tracts of land situated in one or more districts owned and/or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary. In determining the extent of a landholding, the Secretary shall add to any landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that qualified or limited recipient in proportion to that landholding.

(q) The term *lease* means a contract by which one party (the landlord or lessor) gives to another (the tenant or lessee):

(1) The use and possession of land (including, in some cases, associated buildings, machinery, etc.);

(2) For a specified time;

(3) For agreed upon payments (cash or other considerations); and

(4) By which the lessee assumes the economic interest in the operation and management of the leased land.

(r) The term *legal entity* means any business or property ownership arrangement established under State or Federal law, including, but not limited to, corporations, partnerships, associations, joint tenancies, and tenancies-in-common.

(s) The term *limited recipient* means any legal entity established under State or Federal law benefiting more than 25 natural persons. In these rules, the term “limited recipient” does not include legal entities which are prior law recipients.

(t) The term *nondiscretionary provisions of Title II* or *nondiscretionary provisions* refers to sections 209 through 230 of Public Law 97-293. These provisions of the law are of general application and became effective immediately upon enactment. These provisions apply to all individuals and districts regardless of whether they are subject to the discretionary provisions of title II.

(u) The term *non-full-cost entitlement* means the maximum acreage a landholder may irrigate with less than full-cost irrigation water.

(v) The term *non-full-cost rate* means all water rates other than full-cost rates. Non-full-cost rates are paid for irrigation water made available to land in a landholder’s non-full-cost entitlement.

(w) The term *nonresident alien* means any natural person who is neither a citizen nor a resident alien of the United States.

(x) The term *nonresident alien entitlement* refers to the amount of land on which a nonresident alien may receive irrigation water. Under the discretionary provisions, a nonresident alien may only receive irrigation water on an interest in land held through a legal entity as defined in § 426.4(r) and in no instance may a nonresident alien entitlement exceed that of an individual as defined in § 426.4(j).

(y) The term *prior law* means the Act of June 17, 1902, and acts supplementary thereto and amendatory thereto (32 Stat. 388) which were in effect prior to the enactment of the Reclamation Reform Act of 1982, Public Law 97-293 (96 Stat. 1263) as that law is amended or supplemented by the Reclamation Reform Act of 1982 (Pub. L. 97-293).

(z) The term *prior law recipient* means individuals or entities which have not become subject to the discretionary provisions.

(aa) The term *project* means any Reclamation or irrigation project, including incidental features thereof, authorized by Federal Reclamation law, or constructed by the United States pursuant to such law, or in connection with which there is a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the Secretary through the Bureau of Reclamation for the reclamation of lands.

(bb) The term *qualified recipient* means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits 25 natural persons or less. In these rules, the term “qualified recipient” does not include individuals or legal entities which are prior law recipients.

(cc) The term *Reclamation fund* means a special fund established by the Congress under the Reclamation Act of June 17, 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues. The Congress makes appropriations from this fund for the investigation, construction, operation, and administration of Bureau of Reclamation projects. Collections from water users for reimbursable costs of these projects are returned to the fund unless Congress has specified otherwise for specific projects.

(dd) The term *recordable contract* means a written contract between the Secretary and a landowner capable of being recorded under State law, providing for the sale or disposition of land held by that landowner in excess of the ownership limitations of Federal Reclamation law.

(ee) The term *resident alien* means any natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may from time to time be amended.

(ff) The term *Secretary* means the Secretary of the Interior or his designee.

(gg) The term *Title II* refers to sections 201 through 230 of Public Law 97-293, without differentiation between the discretionary and nondiscretionary provisions of that law.

(hh) The term *westwide* or *Reclamation wide* mean the 17 Western States in which Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

#### § 426.5 Contracts.

(a) *In general.* Title II of Public Law 97-293 will be applied to repayment and water service contracts (hereafter contracts) by the following rules:

(1) *Contracts in force on October 12, 1982.* Contracts in force on October 12, 1982, which have not been amended to conform to the discretionary provisions shall continue in effect, provided however, that full-cost rates for irrigation water may be applicable, as set forth in § 426.7(c)(3), to certain individuals and entities in these districts.

(2) *New contracts.* Contracts executed after October 12, 1982, shall be subject to all provisions of title II. Districts which have an existing contract(s) with the United States but enter into a new contract after October 12, 1982, shall be subject to all provisions of title II, except as provided in § 426.13(a)(3). The execution date of the new contract determines the date upon which the discretionary provisions apply to the contract. In these rules, individuals and entities subject to the provisions of new contracts are termed either "qualified recipients" or "limited recipients." *Note:* A district's action to execute a new contract as discussed in this paragraph makes the discretionary provisions binding on all individuals and legal entities with landholdings in that district but does not make the discretionary provisions binding on the

members of the legal entity as to their landholding held outside the legal entity and outside of the district. Land held by a prior law member of a legal entity is counted toward the member's 160 acre entitlement.

(3) *Amended contracts.* (i) Contracts amended for conformance to the discretionary provisions. Contracts which are amended at the request of the district to conform with the discretionary provisions of title II need be amended only to the extent required for conformance with that title. A district shall be subject to the discretionary provisions from the date the district's request is submitted to the Secretary. The district's request to the Secretary must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, the action required by applicable State law to amend its contract. In these rules, individuals and entities subject to the provisions of these contracts are termed either "qualified recipients" or "limited recipients."

(ii) Contracts amended to provide additional or supplemental benefits. All contracts which are amended after October 12, 1982, to provide a district supplemental or additional benefits, shall be amended at the same time to conform to the discretionary provisions. The date that the contract amendment is executed by the Secretary will establish the date for determining the application of the discretionary provisions. All contract amendments will be construed as providing supplemental or additional benefits except those amendments which do not require the United States to expend significant funds, to commit to significant additional water supplies, or to substantially modify contract payments due the United States. More specifically, amendments to existing contracts providing for the following shall not be considered to provide additional or supplemental benefits:

(A) The construction of those facilities for conveyance of irrigation water that were contracted for by the district on or before October 12, 1982;